

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

MEDICAL EDUCATIONAL AND HEALTH
SERVICES, INC.

DEBTOR

MEDICAL EDUCATIONAL AND HEALTH
SERVICES, INC.

PLAINTIFF

vs.

INDEPENDENT MUNICIPALITY OF MAYAGUEZ,
ET AL.

DEFENDANTS

xxx-xx2077

CASE NO. 10-04905 BKT

Chapter 11

ADV. NO.: 10-148

FILED & ENTERED ON 06/07/2011

Debtor(s)

OPINION & ORDER

On February 3, 2011, Defendants and Third-Party Plaintiffs Mayag  ez Medical Center- Dr. Ram  n Emeterio Betances, Inc. ("MMC") and Sistemas Integrados de Salud del Sur Oeste, Inc. ("SISSO"), filed a third-party Complaint [Dkt. No. 54] against Dr. Orestes Castellanos ("Castellanos") and Mr. Pedro Montes Garc  a ("Montes") pursuant to Fed. R. Civ. P. 14. 1 In this motion, MMC and SISSO argue that if they are found liable to Plaintiff, Medical and Educational Health Services, Inc. ("MEDHS"), then their liability is derived from Castellanos' and Montes' breach of fiduciary duty. On April 11, 2011, in response to this motion,

¹ As of May 7, 2011, when Third-Party Plaintiffs filed their opposition to Castellanos' Motion to Dismiss, Montes had not yet been served, despite several attempts.

1 Castellanos filed a Motion to Dismiss the Third-Party Complaint [Dkt. No. 84] on
2 the grounds that the Third-Party Plaintiffs failed to state a claim and failed to
3 follow requisite procedure. The Third-Party Plaintiffs filed an Opposition to
4 the Motion to Dismiss on May 7, 2011 [Dkt. No. 88]. For the reasons set forth
5 below, the Motion to Dismiss filed by Third-Party Defendant Castellanos is hereby
6 DENIED.

7 The court has jurisdiction over this action based on 28 U.S.C. §§ 1334,
8 1367.

9 **I. Factual Background**

10 On August 27, 2009, MEDHS entered into an Operation and Administration
11 agreement (the "Lease") with the Municipality of Mayag  ez (the "Municipality").
12 On September 1, 2009, MEDHS entered into a sublease with SISSO (the "Sublease"),
13 under which SISSO became the administrator and operator of the Ram  n Emeterio
14 Betances Medical Center (the "Hospital"). SISSO entered into rental agreements
15 with all of the tenants in the medical center except for Mayag  ez Advance
16 Radiotherapy Center ("MARC"), who entered into a sublease directly with MEDHS on
17 October 29, 2009 ("MEDHS-MARC sublease").

18 MEDHS failed to notify the Municipality and SISSO of the MEDHS-MARC
19 sublease, violating the provision in their lease with the Municipality requiring
20 such notification. MEDHS also allowed patient access and employee parking not
21 permitted by the Hospital's policy. Furthermore, MEDHS failed to have the MEDHS-
22 MARC sublease notarized and to collect any rental payments from MARC. Because
23 there were no payments made to MEDHS from MARC, MEDHS did not pay the
24 Municipality and that lease terminated.

25 Castellanos was serving in an official capacity for MEDHS, MARC, and SISSO
during the relevant time. Third-Party Plaintiffs allege that he breached his
fiduciary duties to MEDHS and SISSO by creating a scam lease in which MARC never
paid rent to MEDHS. They further argue that the scam lease is a direct cause of
MEDHS not being able to pay the Municipality, which led to the broken lease
agreement between MEDHS and Municipality for which MEDHS is seeking relief.

1 Thus, they seek to implead Castellanos in the event that they are found liable to
2 MEDHS for damages resulting from the terminated lease with the Municipality.

3 **II. Impleader Under Rule 14**

4 Rule 14(a)(1) states that "a defending party may, as third-party plaintiff,
5 serve a summons and complaint on a non-party who is or may be liable to it for
6 all or part of the plaintiff's claim against it." Fed. R. Civ. P. 14(a)(1). The
7 rule is designed to promote judicial efficiency by allowing a defendant to bring
8 claims relating to the same "aggregate or core of facts which is determinative of
9 the plaintiff's claim" against a non-party, without having to initiate a separate
10 suit. Gross v. Hanover Ins. Co., 138 F.R.D. 53, 55 (S.D.N.Y. 1991) (internal
11 citations omitted). Rule 14 is applicable to adversary proceedings in Bankruptcy
12 pursuant to Fed. R. Bankr. P. 7014.

13 As to the present case, this Court concluded that impleader is proper.
14 According to the facts alleged in the Complaint, Castellanos served as President
15 of MEDHS, as well as CEO and Treasurer of MARC, for the duration of the MEDHS-
16 MARC sublease. Simultaneously, he was an officer and shareholder of SISSO from
17 the time of the aforementioned sublease until at least November 1, 2010. Third-
18 Party Plaintiffs are convincing in their argument that these personal interests
19 create a duty in Castellanos to act fairly and responsibly in relation to the
20 matters of the corporations, and that a breach of such a duty may make him liable
21 for damages. P.R. Laws Ann. Tit. 14 § 3563-64 (2010). They allege that
22 Castellanos' positions of authority render him responsible for the acts and
23 omissions of the corporations he represents, and that he used his concurrent
24 positions in the corporations to coordinate a sham lease between MEDHS and MARC,
25 during which he violated the Hospital's policies in various ways, including never
collecting any rent. Allegedly, the scam financially benefitted Castellanos and
MARC and led to the termination of the lease between MEDHS and the Municipality.

Thus, the allegation that Castellanos breached his fiduciary duty arises
from events relating to the termination of the MEDHS-Municipality lease for which

1 the MEDHS is seeking to obtain relief from Third-Party Plaintiffs. Therefore, it
2 promotes judicial efficiency to allow impleader in this case, because the alleged
3 breach of duty shares core facts of MEDHS's claim against Third-Party Plaintiffs
4 for breach of contract. Because a breach of this fiduciary duty may make
5 Castellanos derivatively liable, the Court concluded that impleader of
6 Castellanos under Rule 14(a) was proper. [Dkt. No. 57].

7 **III. Sufficiency of Allegations**

9 Rule 8 requires: 1) a short, plain statement of the claim, 2) a showing of
10 entitlement to relief, and 3) a prayer for relief. Fed. R. Civ. P. 8. Rule 8
11 was expanded by Bell Atlantic Corp. v. Twombly to mean that the claim must not
12 only be possible, but *plausible* on its face in order to survive early dismissal
13 under a 12(b)(6) motion to dismiss. 550 U.S. 544, 547 (2007). "A claim has
14 facial plausibility when the pleaded factual content allows the court to draw the
15 reasonable inference that the defendant is liable for the misconduct alleged."
16 Id. at 556. If the plaintiffs "have not nudged their claims across the line from
17 conceivable to plausible, their complaint must be dismissed." Id. at 570. "The
18 issue is not whether a plaintiff will ultimately prevail but whether the claimant
19 is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416
20 U.S. 232, 236 (1974). Because no evidence has been presented at the time of a
21 motion to dismiss, the court accepts as true the facts as they are asserted in
22 the complaint and views all inferences in favor of the non-moving party. Ezra
23 Charitable Trust v. Tyco Int'l, Ltd., 466 F.3d 1, 6 (1st Cir. 2006). Thus, this
24 Court must accept as true the facts stated by MMC and SISSO, and construe them in
25 their favor.

Castellanos argues that Third-Party Plaintiffs' complaint does not include facts to support a claim under any law, and so is subject to dismissal under Rule 12(b)(6). He offers several bases for why Third-Party Plaintiffs do not have a claim entitling them to relief, but he fails to prove any of them. First, he

1 argues that if MEDHS wins, then their lease with the Municipality is valid, and
2 so there is no need for relief. However, it is possible that the MEDHS-
3 Municipality lease be upheld despite the fact that the subsequent sublease
4 between MEDHS and MARC was a sham that caused damages.

5 Secondly, Castellanos argues that Third-Party Plaintiffs fail to show
6 entitlement to relief because if MEDHS prevails, then "the necessary conclusion
7 would be that all of MEDHS's problems stem from MCC and SISSO's misdeeds and
8 failures." Mot. to Dismiss 3. The Court finds this reasoning unconvincing
9 because it leads to the conclusion that if a plaintiff wins, the defendant is
10 always the only possible liable party. This contradicts Rule 14, which
11 acknowledges that a defendant may derive liability from a third party. Case law
12 also supports the ability of a defendant to implead an employee of the plaintiff.
13

14 See Gross v. Hanover Ins. Co., 138 F.R.D. 53 (S.D.N.Y. 1991) (where defendant
15 successfully impleaded an employee of the plaintiff company). As discussed
16 above, the Court already found that impleader was proper in this action.

17 Castellanos also asserts that because he filed the Adversary Complaint
18 against MMC and SISSO on MEDHS's behalf, he upheld his duties. Only if he had
19 failed to bring such a claim, he argues, would he be liable to MEDHS for damages
20 resulting from the termination of their lease with the Municipality. Thus,
21 Third-Party Plaintiffs' claim that he breached his fiduciary duty is not
22 plausible and so should be dismissed. However, filing an adversary complaint on
23 behalf of MEDHS does not render it implausible that Castellanos could have
24 breached a duty elsewhere. We must treat the facts stated as true, and it
25 appears from the factual allegations by SISSO and MMC that it is plausible that
Castellanos breached a fiduciary duty to MEDHS and SISSO when he failed to
collect rent from MARC.

IV. Procedural Compliance

Castellanos also alleges two procedural flaws which he believes should

1 preclude Third-Party Plaintiffs from impleading him: 1) failure to file a
2 complaint with the corporation before filing a formal complaint; and 2) a lack of
3 standing to bring a claim. However, Castellanos misses the point of Third-Party
4 Plaintiffs' motion, and bolsters his argument with case law pertaining to
5 avoidance actions, not impleader motions. The Third-Party Plaintiffs are not the
6 creditors of MEDHS, and this is not an avoidance action. Therefore, Third-Party
7 Plaintiffs were not required to file a complaint with the corporations prior to
8 bringing suit, and so did not violate procedure.

9 Secondly, Castellanos argues that in order to have standing to sue, a
10 third-party plaintiff must be a debtor in possession, a Chapter 11 Trustee, the
11 U.S. Trustee, a creditors' committee, or a creditor of the estate. The Court
12 finds this argument unconvincing because it is not supported by any legal
13 authority.

14 **V. Conclusion**

15 It is plausible that the facts as alleged in Third-Party Plaintiffs' motion
16 give rise to a valid claim against Third-Party Defendant Castellanos. Third-
17 Party Plaintiffs have also complied with all procedural requirements. Because of
18 the foregoing reasons, Third-Party Defendant's Motion to Dismiss is hereby
19 DENIED.

20 IT IS SO ORDERED.

21 San Juan, Puerto Rico this 07 day of June, 2011.

22
23
24
25 
Brian K. Tester
U.S. Bankruptcy Judge

CC: ALL CREDITORS